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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CORY EVANS, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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INDEX

I. ISSUE PRESENTED..... 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 5

SUFFICIENT EVIDENCE SUPPORTS THE CONVICTION
FOR UNLAWFUL POSSESSION OF A STOLEN MOTOR
VEHICLE..... 5

Standard of review. 5

IV. CONCLUSION 11

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Davis, 182 Wn.2d 222, 340 P.3d 820 (2014)..... 6

State v. Goodman, 150 Wn.2d 774, 83 P.3d 410 (2004) 5

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980) 5

State v. Hudson, 56 Wn. App. 490, 784 P.2d 533 (1990)..... 8

State v. Lakotiy, 151 Wn. App. 699, 214 P.3d 181 (2009) 10

State v. Portee, 25 Wn.2d 246, 170 P.2d 326 (1946) 8

State v. Porter, 186 Wn.2d 85, 375 P.3d 664 (2016)..... 7

State v. Q.D., 102 Wn.2d 19, 685 P.2d 557 (1984) 8

State v. Randecker, 79 Wn.2d 512, 487 P.2d 1295 (1971)..... 6

State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992) 5

State v. Thomas, 150 Wn.2d 821, 83 P.3d 970 (2004) 5

State v. Williams, 96 Wn.2d 215, 634 P.2d 868 (1981)..... 6

STATUTES

RCW 9A.08.010..... 8, 10

RCW 9A.56.068..... 6

RCW 9A.56.140..... 7

I. ISSUE PRESENTED

Did the State present sufficient evidence to demonstrate the defendant knew the motorcycle was stolen?

II. STATEMENT OF THE CASE

The defendant was charged in superior court with possession of a stolen motor vehicle. CP 14. A jury convicted the defendant as charged and this appeal timely followed. CP 81.

John Richardson lived in Aberdeen, Washington, at the time of the incident. RP 46. He was the owner of a 2009 Kawasaki 250 motorcycle. RP 46. Mr. Richardson paid approximately \$4,500¹ for the motorcycle in 2010. RP 47. He subsequently gave the motorcycle to his son in Spokane as a commuter vehicle for school, although Mr. Richardson remained the registered owner. RP 47-48. The motorcycle was subsequently stolen. RP 48. The vehicle remained in a “like new” condition until it was stolen. RP 50-51.

On April 28, 2017, around 9:52 a.m., Spokane Police Department Sergeant Kurt Vigessa was on duty² near Pacific and Ralph, close to Freya

¹ The vehicle registration for the motorcycle had it valued at \$3,446. RP 49. The date of the document is unknown.

² Sgt. Vigessa was wearing an outer exterior vest with “police” on the front, large “police” on the rear, and a cloth SPD badge and full duty belt. RP 32.

Street, as it intersects with I-90. RP 65. In that area, the officer observed a motorcycle with no license plate. RP 66. The motorcycle drew the officer's attention because to avoid detection, motorcycles that are stolen often have no license plate displayed. RP 66.

The officer made a U-turn at Pacific and Ralph, drove toward the motorcycle, and stopped seven to ten feet in front of the motorcycle, with all emergency lights activated. RP 66-67, 118-19. As the officer began exiting his patrol vehicle, the defendant started up the motorcycle and attempted to evade the officer by driving around the patrol car. RP 66-67, 118-19. The defendant and motorcycle subsequently fell to the ground as it approached the patrol vehicle. RP 67. The officer exited his patrol car and was "face to face" with the defendant; he subsequently shoved the defendant away from the motorcycle. RP 119-20. The defendant, wearing a motorcycle helmet, immediately ran in a southeast direction across an empty field. RP 34. The officer, on foot, gave chase and eventually caught the defendant near a restaurant, after the defendant became winded. RP 68.

The defendant told the officer that he had purchased the motorcycle from a friend for \$100, approximately two to three weeks before the stop.³

³ The trial court previously determined that the defendant's statements to Sgt. Vigessa were admissible at the time of trial. CP 59-61. No error has been assigned to that ruling.

RP 69-70, 120. The defendant also stated he did not have any paperwork for the motorcycle, and *it could be stolen* because he purchased it “so cheap.” RP 70. The defendant refused to tell the officer who his friend was so the officer could verify his story. RP 70, 121. Another officer verified the motorcycle was stolen. RP 71. There was no temporary permit or any other insignia on the motorcycle, which authorized it to be driven on a public roadway. RP 76.

Upon recovery of the motorcycle, Mr. Richardson observed the ignition switch and ignition holder had been removed.⁴ RP 52-53, 58-60. Similarly, after it was stolen, the gas cap of the motorcycle had been damaged allowing the tank to be filled without a key. RP 55, 58. It originally required a key to open the gas tank. RP 55, 58. Mr. Richardson never gave the defendant permission to possess the motorcycle. RP 55-56. He estimated the damage to the motorcycle was approximately \$600. RP 61.

The defendant testified at trial and admitted he was in possession of the motorcycle on April 28, 2017. RP 86. He alleged that when he originally came into possession of the motorcycle, it was in pieces and that he subsequently put it back together. RP 87. He also asserted he had paid \$500 for the motorcycle. RP 87. The defendant maintained that he ran from

⁴ There were visible “grinding” marks around the ignition switch area. RP 59.

Sgt. Vigessa because a “gray Dodge Charger⁵ came driving at me and it looked like he was trying to hit me so I tried to start the bike and get around it and he tried to run me off the road. Then someone jumped out of the vehicle, shoved me, and then started chasing me so I ran.” RP 90. He claimed he did not know Sgt. Vigessa was a police officer. RP 91. However, the defendant admitted on cross-examination that he had a prior contact with Sgt. Vigessa in the gray Charger patrol car, but claimed he did not observe the emergency lights activated when he ran from Sgt. Vigessa. RP 98-99, 106. The defendant also denied telling Sgt. Vigessa that the vehicle could be stolen and that he had purchased it for \$100. RP 104. The defendant admitted on direct examination to having been convicted of first degree theft and vehicle prowling in 2012. RP 93.

⁵ Sgt. Vigessa drove a plain marked police Charger. RP 66. It was gray in color and equipped with emergency lights and siren. RP 66. The officer described his emergency lights as wig-wag headlights, a full visor with interior red and blue lights on the inside of the windshield, which protrude out, both outside mirrors with red and blue lights, a full light bar in the rear window. RP 119.

III. ARGUMENT

SUFFICIENT EVIDENCE SUPPORTS THE CONVICTION FOR UNLAWFUL POSSESSION OF A STOLEN MOTOR VEHICLE.

The defendant contends there was insufficient evidence to convict him of possession of a stolen motor vehicle, claiming although he possessed the victim's motorcycle, he did not know it was stolen.

Standard of review.

In reviewing a challenge to the sufficiency of the evidence, the test is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses and the persuasiveness of the evidence, *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). In addition, circumstantial evidence carries the same weight as direct evidence. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). In a sufficiency of the evidence challenge, the court is highly deferential to the decision of the jury.

State v. Davis, 182 Wn.2d 222, 227, 340 P.3d 820 (2014). In that regard, our Supreme Court has stated:

It is the province of the jury to weigh the evidence, under proper instructions, and determine the facts. It is the province of the jury to believe, or disbelieve, any witness whose testimony it is called upon to consider. If there is substantial evidence (as distinguished from a scintilla) on both sides of an issue, what the trial court believes after hearing the testimony, and what this court believes after reading the record, is immaterial. The finding of the jury, upon substantial, conflicting evidence properly submitted to it, is final.

State v. Williams, 96 Wn.2d 215, 222, 634 P.2d 868 (1981). Similarly expressed:

The fact that a trial or appellate court may conclude the evidence is not convincing, or may find the evidence hard to reconcile in some of its aspects, or may think some evidence appears to refute or negative guilt, or to cast doubt thereon, does not justify the court's setting aside the jury's verdict.

State v. Randecker, 79 Wn.2d 512, 517-18, 487 P.2d 1295 (1971).

A person is guilty of possession of a stolen motor vehicle if he or she possesses a stolen motor vehicle. RCW 9A.56.068. The State must prove that the defendant acted with knowledge that the motor vehicle had

been stolen. *State v. Porter*, 186 Wn.2d 85, 90, 375 P.3d 664 (2016).

Accordingly, the trial court instructed the jury as follows, in pertinent part:

To convict the defendant of the crime of possessing a stolen motor vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about April 28, 2017, the defendant knowingly possessed a stolen motor vehicle;
- (2) That the defendant acted with knowledge that the motor vehicle had been stolen;
- (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto; and
- (4) That any of these acts occurred in the State of Washington.

CP 75.

Possession was defined as follows:

A person commits the crime of possession a stolen motor vehicle when he or she possesses a stolen motor vehicle. Possessing a stolen motor vehicle means knowingly to receive, retain, possess, conceal, or dispose of a stolen motor vehicle knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

CP 74; *see also* RCW 9A.56.140(1).

“Stolen” was defined as: “Stolen means obtained by theft.” CP 76.

The court also instructed on the definition of knowledge.

A person knows or acts knowingly or with knowledge with respect to a fact or circumstance when he or she is aware of

that fact or circumstance. It is not necessary that the person know that the fact or circumstance is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

CP 78; *see also* RCW 9A.08.010(1)(b).

“When a person is found in possession of recently stolen property, slight corroborative evidence of other inculpatory circumstances tending to support guilt will sustain a conviction for possession of stolen property.” *State v. Portee*, 25 Wn.2d 246, 253-54, 170 P.2d 326 (1946) (internal citations omitted). Slight corroborative evidence includes false or improbable explanations of possession, flight, or physical evidence of the defendant's presence at the scene of the crime. *State v. Q.D.*, 102 Wn.2d 19, 28, 685 P.2d 557 (1984). In that regard, in *State v. Hudson*, 56 Wn. App. 490, 495, 784 P.2d 533 (1990), the court held that the use of a recently stolen vehicle combined with the defendant's flight from the police supported an inference of guilty knowledge.

Here, the owner of the motorcycle reported it stolen and he did not authorize the defendant to possess his vehicle. The defendant admitted to

the officer that he knew the motorcycle *might be stolen*, notwithstanding his later denial of having made that statement. When the defendant first encountered the officer, who was in the patrol car with emergency lights activated, the defendant attempted to evade the officer on the motorcycle. Subsequently, after a “face to face” encounter with the officer, the defendant fled. The defendant stopped running only after he became winded. The jury certainly could have discounted the defendant’s claim that he did not know it was a police officer or patrol car, notwithstanding he had previous contact with that Sgt. Vigessa in that particular patrol car.

Furthermore, the defendant initially told the officer he purchased the motorcycle at a greatly reduced price of \$100. From that statement, the jury could reasonably infer the defendant knew the motorcycle was stolen because the price was substantially reduced from the motorcycle’s value of \$4,500. Additionally, the defendant had no license plate or paperwork for the motorcycle, no bill of sale, no title, and no temporary registration. Further, he refused to tell the officer who sold him the vehicle. The jury could reasonably infer that the defendant knew the motorcycle was stolen because the defendant did not have any of the usual paperwork associated with the sale of a vehicle and he refused to identify the seller to the officer.

Finally, upon its recovery, the motorcycle had been altered so that it could be operated without a key. The original ignition had been removed in

conjunction with the locking gas cap, suggesting the defendant had knowledge that it was stolen because the original key to the vehicle was not available to operate the vehicle after it was stolen.⁶ A similar circumstance was found sufficient to support possession of stolen property in *State v. Lakotiy*, 151 Wn. App. 699, 714-15, 214 P.3d 181 (2009). The evidence and reasonable inferences in that case showed:

(1) Lakotiy was standing next to a stolen car in a small storage unit, (2) the car had been partially disassembled and the ignition removed, (3) several parts of the car were on the ground next to the car, (4) another individual in the storage unit was working on the stolen vehicle, and (5) when Lakotiy saw the officers, he reached back and placed a set of jiggler keys and an ignition on the rear of the vehicle.

Id. at 714-15.

Here, the defendant's flight from the officer, his improbable explanation of how he came into possession of the vehicle, his statement to the officer that the motorcycle might be stolen, and the partial disassembly of the motorcycle to allow it to be driven and filled with gas without the key all support a reasonable inference the defendant knew the motorcycle was stolen. There was sufficient evidence to support the conviction for possession of a stolen motor vehicle.

⁶ A person knows of a fact by being aware of it or having information that would lead a reasonable person to conclude the fact exists. RCW 9A.08.010(1)(b).

IV. CONCLUSION

For the reasons stated herein, the State requests this Court affirm the judgment and sentence.

Respectfully submitted this 19 day of September, 2018.

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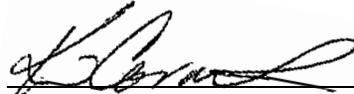
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I certify under penalty of perjury under the laws of the State of Washington, that on September 19, 2018, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Laura M. Chuang and Kristina M. Nichols
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9/19/2018
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

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